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GOVERNMENT OF CANADA MODERNIZES *INDIAN OIL AND GAS ACT*

2-3055

Ottawa, ONTARIO (June 17, 2008) – The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, introduced amendments to the *Indian Oil and Gas Act* today in the House of Commons. The proposed amendments will modernize dated regulations, help to ensure environmental protection of First Nation lands, increase regulatory compliance, and facilitate the collection of royalties and other monetary compensation due.

"Canada's legislation that affects oil and gas exploration and production has not been significantly updated in over 30 years. Today our government is taking action to introduce changes that will modernize this bill, " said Minister Strahl. "These amendments will update Canada's regulatory regime for the management of First Nations natural resources, ensure accountability measures and laws are enforced, foster economic development, and help to protect the environment."

Modernizing the *Indian Oil and Gas Act* and its associated regulations is intended to eliminate the existing regulatory gap. Levelling the playing field between off-reserve and on-reserve oil and gas activities will reduce barriers to economic development and will allow the federal government to better fulfill its obligation to manage oil and gas resources on First Nations lands.

The amendments will help to bring the *Indian Oil and Gas Act* in line with current provincial legislation, and create more clear, transparent and efficient regulations for the oil and gas industry.

Canada worked in co-operation with the Indian Resource Council *(external link, opens a new window)* , a First Nations organization that advocates on behalf of approximately 130 oil and gas producing – or potentially producing – First Nations, to develop the amendments to the Act.

The *Indian Oil and Gas Act* was passed in 1974 and has not substantially changed since that time. It is used to help the federal government manage oil and gas resources on First Nations reserve lands across Canada, generally south of the 60th parallel. Indian Oil and Gas Canada *(external link, opens a new window)* is the regulating body of the *Indian Oil and Gas Act* and is a special operating agency within Indian and Northern Affairs Canada.

Backgrounder - *Indian Oil and Gas Act* Amendments

Fact Sheet - *Indian Oil and Gas Act* Amendments

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Backgrounder - *Indian Oil and Gas Act* Amendments

The *Indian Oil and Gas Act* is the legislative tool for the federal government to manage and administer the exploration and production of oil and gas resources on reserve lands.

Indian Oil and Gas Canada is the special operating agency within Indian and Northern Affairs Canada mandated to fulfil the Crown's fiduciary and statutory obligations related to the management of oil and gas resources in First Nations.

On reserve, oil and gas activity is a significant source of capital and provides access to economic development opportunities for approximately 130 First Nations with oil and gas production, or potential production, opportunities. Over 80 per cent of First Nations oil and gas production occurs in Alberta. In 2005-2006 alone, over $270 million in oil and gas revenues were collected on behalf of about 60 First Nations with active petroleum agreements. These monies are collected by Canada and 100 per cent is released to First Nations pursuant to the Indian Act. For these First Nations, this revenue and increased access to oil and gas-based economic development opportunities improve their potential for increased self-reliance.

Why The Bill Is Needed

The oil and gas industry is becoming increasingly complex. Off reserve, the provinces have been more adept in responding to industry and technology changes. As an example of their capacity to respond, the Alberta Mines and Minerals Act and its accompanying regulations have been amended approximately 15 times since the mid-1970s, while the *Indian Oil and Gas Act* has remained virtually unchanged since 1974.

What The Proposed Legislation Does

Modernizing the *Indian Oil and Gas Act* and its associated regulations is intended to eliminate the existing regulatory gap. Levelling the playing field between off-reserve and on-reserve oil and gas activities will reduce barriers to economic development and will allow the federal government to better fulfill its obligation to manage oil and gas resources on First Nations lands.

The proposed changes provide solutions to two specific problem areas. First, they respond to immediate needs related to the day-to-day management of First Nation oil and gas resources by modernizing the current regime. Second, enhancements to Governor-in-Council regulation-making powers would facilitate the continuous improvement of the regime in response to industry and technology advances.

The core areas for change addressed in the proposed amendments to the Act are regulation-making powers, audit powers, limitation period for actions to collect amounts owing, determination of royalty payments, a comprehensive enforcement system comprised of fines and penalties, a remedy for trespass, environmental protection, and authority to issue replacement leases for lands added to reserve.

Conclusion

A key policy objective for the Government of Canada is to modernize the legislative frameworks that support First Nations programs, services and governance. The proposed legislation will modernize the regulatory regime for oil and gas activities on reserve lands making the federal authority more transparent and accountable. Harmonizing

and regularizing on- and off-reserve regulation of oil and gas exploration and production will reduce barriers to economic development for First Nations.

In providing an efficient and effective oil and gas regulatory regime, this proposed legislation continues to fulfil the Government of Canada's responsibility to manage oil and gas resources on behalf of First Nations.

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Fact Sheet: *Indian Oil and Gas Act* Amendments

First Nations oil and gas resources on reserve lands are managed by Indian Oil and Gas Canada through the *Indian Oil and Gas Act*, passed in 1974, and the Indian Oil and Gas Regulations, 1995. The existing Act is skeletal (6 sections) and was enacted during the first global energy crisis to provide the tools to operate in the context of a heavily regulated oil and gas industry.

Since that time, provinces have consistently modernized their oil and gas laws to effectively manage the oil and gas sector.

By remaining virtually unchanged for the past 34 years, the Act has not kept pace with provincial regulatory enhancements or industry developments. Oil and gas transactions are growing in volume, variety and complexity and the federal government is challenged on a daily basis to provide a modern service with legislative tools to adequately regulate industry operations on behalf of First Nations.

The proposed amendments to the Act address the need to manage all aspects of industry operations on First Nation lands. In addition to modernizing dated regulations and providing greater certainty for all stakeholders, the amendments will help to ensure environmental protection of First Nation lands, increase regulatory compliance, and facilitate the collection of royalties and other monetary compensation due.

Alberta as a Benchmark

In Canada, a great majority of oil and gas exploration and development activity occurs within the Province of Alberta. To ensure continued industry investment and fair and sustainable resource development, the Government of Alberta has developed an oil and gas regulatory regime that is widely considered to be effective. In developing proposed amendments to the Act, the federal government has used the Alberta regime as a benchmark.

In addition, the proposed changes to the Act will provide the authority to replicate appropriate provincial legislation and regulations where no comprehensive federal regimes exist. Replicating provincial laws and regulations will not take jurisdiction from, or give jurisdiction to, provinces but rather will produce federal rules that are consistent with relevant provincial rules. Harmonizing the environmental regime governing oil and gas activities on reserves with that for oil and gas activities off reserves, within a particular province, is a good example of replicating a provincial regime into a federal law.

Proposed Amendments

The proposed changes to the Act are required to provide greater certainty as to the legislative scope of the Act. The proposed amendments will also provide for a harmonized regulatory regime consistent with current industry practices and standards, closing the regulatory gap and therefore providing greater certainty for First Nations, Canada, industry and provinces.

Regulation-making Powers

The current Act provides limited powers to the Governor-in-Council to make regulations. It is proposed that the Act be amended to expand Governor-in-Council authorities to make regulations governing the full scope of

operations now considered essential to properly manage the exploration and production of oil and gas on First Nation lands.

Audit Powers

Auditing the records of a company is a vital function the federal government must perform in order to determine the royalty payable to First Nations. Determining the royalty payable is a complex calculation based on the royalty formula, selling price of oil and gas, and the legitimate deduction of certain costs and allowances incurred by the company. A 1997 court decision (Imperial Oil Resources v. Irwin) found that, under the current wording of the regulations, the federal government does not have the right to audit company records. Indian Oil and Gas Canada's role is currently limited to examining a company's records. The proposed amendments to the Act respond to that court decision and provide the federal government with clear and comprehensive audit powers.

Limitation Period

The current Act does not include the power to define, in the regulations, a limitation period respecting how long the Minister has to commence an action to collect an amount owing, nor does it specify how long a company is required to keep its records so that the federal government can perform its audit function. Since the passing of the Act and its regulations, the federal government has relied on provincial Limitation Acts, which have generally been sufficient. However, in 2000, the Province of Alberta proclaimed a new Limitations Act which sets the basic limitation for filing a legal action at 2 years (reduced from 6 years). This is inconsistent with business practices of Indian Oil and Gas Canada and the oil and gas industry in general as it does not provide sufficient time to reconcile and audit accounts. Therefore, a 10-year limitation period is proposed to ensure Canada has adequate time to reconcile royalties. The proposed amendments to the Act also authorize regulations that could specify the period for which records must be kept to ensure they are available should an audit be required.

Royalty Payments

Under the proposed amendments to the Act, a general anti-avoidance provision related to the determination of royalty payments could be included in the regulations to prevent business activities from being structured in such a manner as to reduce royalty payments through non-arm's length transactions.

Fines and Penalties

Provincial governments have a comprehensive regime of fines and penalties to ensure compliance. The proposed amendments to the Act provide for a similar regime on First Nations lands. The proposed amendments will give the federal government various options to encourage compliance, up to and including cancelling a lease. The proposed amendments will also establish a comprehensive enforcement system comprised of fines and penalties.

Trespass

The proposed amendments to the Act will provide fines or penalties for trespass. In addition, they will provide a process by which a court on summary conviction can award compensation for oil and gas produced in contravention of the Act or for any consequent reduction in value of First Nation lands.

Replacement Leases

When minerals owned by a province are to be transferred to Canada for the benefit of a First Nation pursuant to a treaty land entitlement agreement and there are existing mineral leases issued by the province, the transfer often requires that Canada issue replacement leases that are equivalent to the existing leases. In order to accomplish this, it is proposed that the Minister have the authority to issue replacement leases that mirror the leases issued by a province.

Courts

To assure industry and First Nations that the federal government is committed to transparency and fairness in its decision making, decisions perceived as high risk, such as the levying of significant penalties and search and seizures, will be implemented through the courts.

Conclusion

The proposed changes to the Act and its regulations will give Indian Oil and Gas Canada the tools it needs to be an effective modern regulator. It will have enforcement tools comparable to those used by the major energy producing provinces. Tools such as the right to audit, the right to impose administrative penalties, the creation of offences and the ability for the courts to fine a negligent operator will better enable Indian Oil and Gas Canada to ensure companies comply with the Act. The proposed changes will also serve to improve environmental protection, increase regulatory compliance, and facilitate the collection of royalties and other monetary compensation due.

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